IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9213, 9214, 9216,

9249, 9250 and 9251 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

LAXMANBHAI KARMANBHA GADHAVI

Versus

STATE OF GUJARAT

Appearance:

MR MR BAROT Sr. Advocate with

MR BK DAVE for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

MR MM TIRMIZI for Respondent No. 2-4,6

MR SUNIL C PATEL for Respondent No. 2,5-6

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/05/2002

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. Rule. Learned APP Mr.K.C.Shah waives service of Rule for respondent-State of Gujarat.

#. Criminal Misc. Applications No.9213, 9214 and 9216 of 2001 are filed by the applicant-Laxmanbhai Karmanbha Gadhvi-original complainant. Whereas, Criminal Misc. Application No.9249, 9250 and 9251 of 2001 are filed by the State of Gujarat. All these applications are filed against impugned common judgment and order dated 9.11.2001 passed by the learned Additional Sessions Judge, Gandhidham-Bhuj below Criminal Misc. Application No.213, 230 and 231 of 2001 filed by the respondents-accused whereby the learned judge released the respondents-accused on bail on certain terms and conditions mentioned in it. This impugned common judgment and order of bail has been challenged by the original complainant as well as State of Gujarat in all these applications, as stated earlier.

#. Initially, notice was ordered to be issued in all these matters by the learned Single Judge of this court and while issuing notice the implementation and operation of the impugned common judgment and order of bail dated 9.11.2001 passed by the learned Additional Sessions Judge, Gandhidham-Kutch has been stayed in all these matters. The interim relief granted earlier by the learned Single Judge of this court, in all these matters, was extended from time to time by different Hon'ble Judges of this court, including this court.

#. Serious grievances have been made by Senior Advocate Shri M.R.Barot appearing for the applicant-original complainant and learned APP Shri K.C.Shah that the learned Additional Sessions Judge while granting bail to the respondents-accused ought not to have made certain observations, which have been made by him in his impugned order, while deciding the bail applications filed by the respondents-accused. They also submitted that in this case as many as 9 murders have been committed, therefore, the learned judge was absolutely wrong in releasing the respondents-accused on bail.

#. However, I am not required to go into the legality and validity of the impugned order of bail passed by the learned Judge in this case as all the learned counsel appearing for respondents-accused straightaway conceded

that without making any observations the impugned order dated 9.11.2001 passed by the learned Additional Sessions Judge, Gandhidham-Kutch be quashed and set aside as practically while issuing notice in all these matters at the admission stage itself the learned Single Judge of this court has stayed the operation of the same. That interim order has remained in force for all this period. But, they requested that considering the fact that the respondents-accused are in jail since long, therefore, the learned Trial Judge be directed to expedite the trial and dispose of the case in accordance with law as early as possible preferably by day today hearing.

#. In view of the above, without going into the legality and validity of the impugned common judgment and order dated 9.11.2001 passed by the learned Additional Sessions Judge, Gandhidham-Kutch passed in Criminal Misc. Applications No.213, 230 and 231 of 2001 releasing respondents-accused on bail on certain terms and conditions is hereby quashed and set aside.

#. Considering the facts and circumstances of the case, the learned Sessions Judge, Kutch-Bhuj is directed to decide the main Sessions Case, as early as possible, preferably by day today hearing. If it is not possible for him, then he may assign the sessions case to any other learned Additional Sessions Judge, who may decide the case, as directed above.

#. Before parting, I must state that whatever observations made by the learned Additional Judge in his impugned common judgment and order dated 9.11.2001 releasing the respondents-accused on bail shall not be taken into consideration by the learned Judge who decides the case finally. It goes without saying that the learned Judge has to decide the case on the strength of the evidence which is led before them during the trial and he should not be swayed away by any observations made by his predecessor while deciding bail applications of the respondents-accused.

##. Before parting, I may also state that now a days a tendency has developed in the subordinate judges to decide the bail applications by detailed reasoned order, which is time and again deprecated by the Hon'ble Supreme Court as well as this Court. It is true that at times arguments are made by the counsel appearing for the parties before the learned Judge at great length on merits but as far as possible the court should keep itself away from discussing the material in detail and giving giving its verdict on merits. Any observation

made by the court while deciding the bail application likely to cause embarrassment to the learned Judge, who decides the case subsequently, therefore, it should be avoided.

##. At this stage, the request made by the learned counsel for the accused to transfer the accused from Sabarmati Central Prison to Rajkot Central Prison is required to be considered. Ahmedabad is far off from Kutch-Bhuj. The accused can easily be kept present during trial at Kutch-Bhuj from Rajkot because of short distance. Hence, the State is directed to shift all the respondents-accused from Ahmedabad Central Jail to Rajkot Jail, till the trial is over.

##. With these observations and directions, all these applications are allowed and the impugned judgment and order dated 9.11.2001 passed by the learned additional Sessions Judge, Gandhidham-Kutch below Criminal Misc. Application No.213, 230 and 231 of 2001 is hereby quashed and set aside. Rule is made absolute. D.S. permitted to the respondents-accused.

(B.J.Shethna, J.)
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